

STATE DEPARTMENT OF PUBLIC WELFARE: Whether State Department possesses any supervisory powers over privately conducted agencies for the case of the aged.

May 1, 1942.

Mr. T. A. Gottschalk, Administrator,
State Department of Public Welfare,
141 South Meridian Street,
Indianapolis, Indiana.

Dear Mr. Gottschalk:

This will acknowledge your letter of April 16 requesting an official opinion with respect to certain powers of the State Board of Public Welfare over private boarding homes for aged people. I set out your questions in order:

"1. Does the State Department of Public Welfare have the power to establish standards which must be followed by private boarding and nursing homes for aged people?

"2. Could a number be fixed as a minimum population for such homes by the State Department of Public Welfare which would bring such homes as have such population within the power of supervision and inspection granted to the State Department by the Legislature?

"3. In determining whether a home was operated for aged persons, could the State Department of Public Welfare fix any minimum age limitation applicable to all such homes so that persons over such age boarding in such homes would be considered as being 'aged' persons?

"4. What is meant by the term 'supervision' as used in said Section 3(b)?

"5. Does the State Department of Public Welfare have the authority to order a nursing or boarding home for aged people closed in case it does not meet the standards fixed by that department? If so, how might such order be enforced?

"6. What power, if any, has the State Department of Public Welfare to license nursing or boarding homes for aged people?

"7. What power, if any, has the State Department of Public Welfare to require the incorporation of a private boarding or nursing home for aged people?

"8. What power, if any, has the State Department of Public Welfare to enforce the betterment of conditions found necessary by the supervision or inspection of a nursing or boarding home for the aged?

You correctly call attention to Section 3 (b) and (d), Chapter 179, Acts of 1941 (formerly Section 5(b) and (d), Chapter 3, Acts of 1936) as being applicable and they are here set out:

"Sec. 3(b). May supervise all correctional activities, including the operation of the state charitable, penal, reformatory, and correctional institutions, and the inspection of local jails; the operation of the school for the blind, the school for the deaf, and the Board of Industrial Aid for the Blind; the operation of all agencies and institutions caring for dependent or mentally or physically handicapped or aged adults, including the approval of the incorporation of charitable agencies, and the supervision of such other welfare activities or services as may be vested in it by law."

"Sec. 3(d). May supervise all benevolent institutions supported in whole or in part by public funds, and all noninstitutional care connected therewith. Inspect or have inspected all privately owned and operated homes for aged people, and report such inspection and recommendations for improvement of such homes for the safeguarding of the interests of members of such homes; and wherever fraud or misrepresentation to secure money from members of such homes is discovered, to report such facts to the prosecuting attorney of the county where such home is located, for further investigation and prosecution."

Section 3(b) gives the State Department of Public Welfare discretionary power to supervise correctional activities, which

latter phrase is extended in meaning by the inclusion of other institutions set out in this section. And it is true that among such included institutions or duties is "the operation of all agencies and institutions caring for * * aged adults, * *". Although the section is ambiguous, it might be asserted that the last above quoted phrase, standing alone, gives some ground for holding that the State Board has supervisory control over institutions for the care of the aged. However, it is necessary to construe Section 3(b) and 3(d) together. The latter section draws a dividing line between institutions supported in whole or in part by public funds and those privately owned and operated. In the first instance, the State Department may "*supervise*". In the second case, the State Department may "*inspect* or have inspected". The State Board in making such inspections, may make recommendations and report facts to the prosecuting attorney for investigation but it is clear that the State Board has no supervisory control over privately owned agencies.

In the face of the clear language used in Section 3(d), sound rules of construction require that any ambiguous language in Section 3(b) be construed in such a way as not to contradict or conflict with the meaning of Section 3(d). In view of what I have said about the lack of supervisory power in the State Board, it is unnecessary to answer your questions seriatim.

STATE BOARD OF ACCOUNTS: State Examiner: Special judges—whether special judges on a change of venue from the regular judge is entitled to more than one per diem for actions in two cases on the same day; whether the same rule applies where the services are in two different courts of the same county but on the same date.

May 1, 1942.

Mr. Otto K. Jensen,
State Examiner,
Indianapolis, Indiana.

Dear Sir:

I have your letter wherein you refer to Section 2-1416, Burns' Ind. St. Ann. Supp. 1941, Acts 1941, Chap. 200, Section